

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Craig Anderson	Team: Squad #4	CCRB Case #: 201604937	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 05/30/2016 4:40 PM	Location of Incident: Newkirk Avenue and East 32nd Street	Precinct: 67	18 Mo. SOL 11/30/2017	EO SOL 11/30/2017	
Date/Time CV Reported Mon, 05/30/2016 6:47 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/08/2016 10:40 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			067 PCT
2. Officers			067 PCT
3. POM Marc Loyola	15528	955101	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Wilson Cordero	27076	953779	067 PCT
2. POM Marc Aurelus	05079	948632	067 PCT
3. POM Michael Bresnahan	9357	952489	067 PCT
4. POM Brian Dean	21099	951659	067 PCT
5. POM Kyle Daly	22644	954694	067 PCT
6. POM Michael Raheb	28396	955356	067 PCT
7. POF Joannie Colon	27657	954657	067 PCT
8. POM Joseph Calabrese	10163	954588	067 PCT
9. POF Yvette Franquiz	18667	957599	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Marc Loyola	Force: Police Officer Marc Loyola struck § 87(2)(b) with a vehicle.	
B.POM Marc Loyola	Force: Police Officer Marc Loyola used physical force against § 87(2)(b)	
C. Officers	Abuse: Officers stopped § 87(2)(b)	
D. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	
E. An officer	Force: An officer struck § 87(2)(b) with an asp.	

Case Summary

Sgt. Richard Custodio of the 67th Precinct reported this incident to IAB on May 30, 2016 (BR 01). The CCRB received the IAB referral on June 8, 2016.

§ 87(2)(g)

On May 30, 2016 at approximately 4:25 p.m., § 87(2)(b) and § 87(2)(b) were involved in a vehicle accident in the vicinity of Flatbush Avenue and Cortelyou Road in Brooklyn. § 87(2)(b) fled the scene of the accident. § 87(2)(b) pursued him and reported the accident to PO Wilson Cordero and PO Marc Aurelus, who were posted at Bedford Avenue and Newkirk Avenue. Those officers broadcast a description of § 87(2)(b)'s vehicle over the radio and numerous officers pursued him.

At approximately 4:40 p.m., § 87(2)(b) crashed his vehicle on Newkirk Avenue at the intersection with East 32nd Street. § 87(2)(b) exited his vehicle and an officer identified by the investigation as PO Marc Loyola allegedly drove into § 87(2)(b) pinning him against a car that was parked nearby (**Allegation A**). PO Loyola and numerous other officers approached § 87(2)(b) and handcuffed him. PO Loyola allegedly punched § 87(2)(b) several times in the head and back (**Allegation B**).

§ 87(2)(b) arrived and approached the accident scene. (Several officers stated that § 87(2)(b) got in a police car and tried to drive it; § 87(2)(b) denied this.) Officers handcuffed § 87(2)(b) (**Allegation C**). During the struggle to handcuff him, numerous officers allegedly used obscenities toward § 87(2)(b) and one officer allegedly struck him in the ribs with an asp (**Allegations D and E**).

§ 87(2)(b) was released after PO Aurelus informed the other officers that he was the victim of the initial hit-and-run. He transported himself to § 87(2)(b) for body pain and later received follow-up treatment from his personal physician. The NYPD's Emergency Services Unit (ESU) responded to the scene to free § 87(2)(b)'s leg from the parked car. An ambulance transported him to § 87(2)(b), where he was diagnosed with a fractured right tibia, which pierced his skin and caused a flesh wound. He later received follow-up care from Correctional Health Services and at § 87(2)(b) (see Privileged Documents).

§ 87(2)(g)

IAB obtained a cell phone video from § 87(2)(b) a man who lives near the incident location. However, the video recording did not start until after § 87(2)(b) was handcuffed and did not show any of the FADO allegations (BR 02).

Mediation, Civil and Criminal Histories

- § 87(2)(b)'s arrest and injuries rendered this case unsuitable for mediation.
- As of August 30, 2016, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim related to this incident with the Comptroller's office (BR 03).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
- [redacted]
[redacted]
[redacted]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (BR 06).
- PO Loyola has been a member of the NYPD for three years. This is the first CCRB complaint against him.

Potential Issues

- The undersigned investigator contacted representatives of the Flatbush Gardens apartment complex and Public School 361, both of which are located near Newkirk Avenue and East 32nd Street. Both representatives said there were no functional cameras installed at the incident location. As noted above, IAB obtained a cell phone video from a man who lives near the incident location, but the recording did not start until after § 87(2)(g) was handcuffed. § 87(2)(g)
[redacted]
[redacted]

Findings and Recommendations

Explanation of Subject Officer Identification

- While all officers interviewed denied that any police vehicle struck § 87(2)(b) PO Loyola and his partner, PO Joannie Colon, acknowledged that their vehicle was the one following most closely behind § 87(2)(b) when he crashed his car. § 87(2)(g)
[redacted]
- All officers interviewed denied punching § 87(2)(b) or seeing another officer do so. § 87(2)(b) and § 87(2)(b) gave dissimilar descriptions of the officer who punched § 87(2)(b). § 87(2)(b) said he was 5'11"-tall white man with dirty blonde hair, while § 87(2)(b) said he was a short, overweight white or Hispanic man with a shaved head, and said in a photo viewing that it was possibly PO Cordero. However, § 87(2)(b) and § 87(2)(b) both said in their interviews that the officer who punched § 87(2)(b) was the same officer who drove the car that hit him. § 87(2)(g)
[redacted]
[redacted]
[redacted]
- § 87(2)(b) estimated that about four officers were involved in stopping and handcuffing him. § 87(2)(g)
[redacted]
[redacted]
[redacted]
[redacted]

- § 87(2)(g) § 87(2)(b) said approximately three officers cursed at him. He could not specify which officer made which statement. He described the officer who struck him with an asp as a Hispanic man who was 5'8" or 5'9" tall, weighed between 160 and 170 pounds, and had black hair. In a photo viewing, he said it was possibly PO Joseph Calabrese, but he was not certain. In his interview, PO Calabrese said he had no interaction with § 87(2)(b) because he was attempting to handcuff § 87(2)(b) at the time § 87(2)(b) approached the scene. All officers interviewed denied striking § 87(2)(b) with an asp, cursing at him, or seeing another officer do so. § 87(2)(g)

Allegation A – Force: Police Officer Marc Loyola struck § 87(2)(b) with a vehicle.

Allegation B – Force: Police Officer Marc Loyola used physical force against § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) denied that he was driving at the time of this incident. He said his boyfriend, § 87(2)(b), was driving while he slept. § 87(2)(b) denied being under the influence of alcohol or drugs. § 87(2)(b) denied any knowledge of the hit-and-run accident with § 87(2)(b). When § 87(2)(b) awoke, § 87(2)(b) was jumping out of the car as it was still moving. § 87(2)(b) moved to the driver's seat and tried to take control, but the vehicle crashed into a pole.

§ 87(2)(b) denied injury as a result of the initial crash and said he got out to inspect the car for damage. As he did this, a marked police car hit him in the right leg from behind, pinning his right leg between the police car and a Dodge that was parked at the location. § 87(2)(b)'s leg got stuck between the tire and the washer fluid reservoir of the Dodge. § 87(2)(b) said he was unaware of the police pursuit until the moment the police car struck him.

The driver of the police car, identified as PO Loyola, got out and approached § 87(2)(b). He punched him in the upper back and the back of his head approximately ten to fifteen times. § 87(2)(b) tried to block the blows with his hands, but did not resist in any way. § 87(2)(b) said that no other officers aside from PO Loyola's partner were present at the time of the punching (BR 07).

In his IAB interview, § 87(2)(b) said that he tried to run when he got out of his vehicle, but did not get anywhere before the police car hit him. He said that about six or seven police officers he could not describe approached him simultaneously and punched him in the head about five or six times (BR 08).

The FDNY Prehospital Care Report indicated that § 87(2)(b)'s right lower leg was stuck in the wheel well of a car after being struck by a motor vehicle. The report did not specify why the EMS personnel believed he was struck by a vehicle. The EMS personnel administered morphine for pain. Upon arrival at § 87(2)(b), § 87(2)(b) said that he was running from the police and they hit him in the lower right leg with a car to stop him from running, causing him to fall forward and hit a parked vehicle. The records note that he was "presented intoxicated," but this

was not elaborated on. § 87(2)(b)'s right tibia was fractured and the bone penetrated the skin, causing a flesh wound with moderate bleeding and drainage. § 87(2)(b) received surgery on the day of the accident for external fixation of the fracture plus incision and drainage and irrigation of the wound. He received surgery again on § 87(2)(b) for internal fixation of the fracture and sutures to the flesh wound. He stayed at the hospital for several days of physical therapy and pain treatment and was discharged on § 87(2)(b).

While in custody on Rikers Island, § 87(2)(b) continued to receive pain medication and antibiotics. On June 10, 2016, another inmate fell on § 87(2)(b)'s leg. He was transported to § 87(2)(b) and treated for an infection to his wound. § 87(2)(b) was released from jail on § 87(2)(b). He returned to § 87(2)(b) on § 87(2)(b) and received surgery to remove dead tissue from the wound. Medical staff recommended a skin graft, but § 87(2)(b) declined (see Privileged Documents).

§ 87(2)(b) said in his CCRB statement that § 87(2)(b) was alone in his car. At one point during the pursuit, § 87(2)(b) drove the wrong way on Nostrand Avenue, a one-way street. On Newkirk Avenue, he hit a speedbump at 60 or 70 miles per hour, causing him to crash into a parked car. § 87(2)(b) was uninjured and exited his car, but a police car ran into him, pinning him against the parked car. § 87(2)(b) was following in his own vehicle and arrived just after the crash, so he did not directly see the police car strike § 87(2)(b) but inferred this based on the vehicles' positions. The driver of the police car that struck him approached § 87(2)(b) with several other officers. The driver punched § 87(2)(b) in the head about three or four times. § 87(2)(b) was immobilized during this (BR 09).

§ 87(2)(b)'s § 87(2)(g) said § 87(2)(b)'s vehicle was still moving when he exited it. He said that the officer's collision with § 87(2)(b) did not appear to be intentional: the officers were following § 87(2)(b) very closely and did not have time to stop. Additionally, § 87(2)(b) did not specify in his IAB interview whether the officer who punched § 87(2)(b) was the driver of the car that struck him or a different officer (BR 10).

IAB interviewed two witnesses who lived near the incident location, § 87(2)(b) and § 87(2)(b) both of § 87(2)(b), near the accident location. § 87(2)(b) said that he heard a noise and went outside. He saw that § 87(2)(b)'s vehicle had struck the front of a parked car. § 87(2)(b) was standing next to his car when a police car struck § 87(2)(b)'s car, pinning § 87(2)(b) between his own car and the parked car. He said the police car did not directly strike § 87(2)(b). He said that officers held § 87(2)(b) down on the hood of the parked car and handcuffed him, but he did not describe seeing the officers punch § 87(2)(b) (BR 11).

§ 87(2)(b) left his house upon hearing a noise and watched the incident from his doorstep. A Mercedes, identified as belonging to § 87(2)(b) had crashed into both a light post and a parked car, taking off the front bumper of the parked car. § 87(2)(b) exited the Mercedes and appeared as though he was about to run, but a marked police car struck him from behind, pinning him to the front wheel of the parked car. When asked directly, § 87(2)(b) clarified that he did not see the police car strike § 87(2)(b) but inferred this based on § 87(2)(b)'s position between the police car and the parked car. He said the police car had to reverse to un-pin § 87(2)(b).

§ 87(2)(b) did not describe the officers punching § 87(2)(b) and this is not shown in the video he recorded. § 87(2)(b) appears to already be in handcuffs at the start of the video. § 87(2)(b) was on the opposite side of the parked car from § 87(2)(b) so it is not possible to see whether the police car was touching § 87(2)(b)'s leg, but the police car was close enough that § 87(2)(b) could rest his upper body upon its hood, and around the three-minute mark an officer can be seen reversing the car away from § 87(2)(b) (BR 12 and 02).

§ 87(2)(b) and IAB provided several photos of the vehicles involved in the incident. The front bumper of § 87(2)(b)'s Mercedes was damaged, particularly near the driver's side headlight. The front bumper of the Dodge that § 87(2)(b) struck was detached and the area near the passenger's side headlight was smashed. A bloody boot can be seen near the Dodge in § 87(2)(b)'s photos, which he said came from § 87(2)(b) (BR 13-15).

PO Loyola said that he followed about twenty feet behind § 87(2)(b)'s vehicle during the pursuit. When another police car approached § 87(2)(b) from the opposite direction on Newkirk Avenue, § 87(2)(b) realized that he had no route of escape and opened his door as though he planned to get out. § 87(2)(b) hesitated, however, and his vehicle struck a Dodge that was parked on the street. During the collision, § 87(2)(b)'s foot got stuck in the bumper of the Dodge.

PO Loyola said he "pulled back" when he saw § 87(2)(b) open his door. When § 87(2)(b) crashed, PO Loyola parked his car about five feet away from him. He denied that his car ever struck § 87(2)(b) or either of the vehicles.

PO Loyola did not immediately realize that § 87(2)(b) was stuck in the parked car. He exited his car and "jumped on top of § 87(2)(b) and tried to put him in handcuffs." § 87(2)(b) resisted by "flailing his arms" and refusing to put his hands behind his back. Numerous officers assisted PO Loyola in handcuffing § 87(2)(b) which took about one minute. PO Loyola denied punching § 87(2)(b) or seeing another officer do so (BR 16).

PO Loyola's partner, PO Colon, said they followed about one car-length behind § 87(2)(b)'s vehicle and never struck him or his vehicle. She said § 87(2)(b) exited his vehicle as it was still moving, causing his vehicle to crash. She did not see how it crashed, but assumed it hit a parked car, based on the damage to the parked car. § 87(2)(b) somehow got his leg stuck in the front fender of the parked car, but she did not see how this occurred. PO Colon was not involved in handcuffing § 87(2)(b) because § 87(2)(b) entered her vehicle and she turned her attention to him (BR 17).

PO Aurelus and PO Cordero, the first officers to observe § 87(2)(b)'s vehicle, both said that § 87(2)(b) was driving. They corroborated § 87(2)(b)'s statement that § 87(2)(b) drove the wrong way on Nostrand Avenue. They wound up behind PO Loyola's car during the pursuit and observed the crash. Both denied that any police vehicle struck § 87(2)(b). Both said that § 87(2)(b) exited his car while it was moving. PO Aurelus said that § 87(2)(b)'s car struck the parked Dodge at an angle, which somehow trapped § 87(2)(b)'s leg in the front of the Dodge. PO Cordero said that § 87(2)(b)'s car struck both § 87(2)(b)'s body and the front of the Dodge, causing § 87(2)(b) to be pinned partially under the Dodge. PO Cordero assisted in handcuffing § 87(2)(b). He said § 87(2)(b) resisted by flailing his arms and elbowing the officers; none of the

officers punched him. PO Cordero was unaware that § 87(2)(b) was stuck until after they had finished handcuffing him. PO Aurelus performed crowd control and denied any involvement in handcuffing § 87(2)(b) (BR 18 and 19).

PO Calabrese said he did not see the vehicle crash, but assisted in handcuffing § 87(2)(b). § 87(2)(b) resisted being handcuffed by flailing his arms. PO Calabrese did not recall punching § 87(2)(b) or seeing another officer do so. He did not recall § 87(2)(b)'s leg being pinned during the struggle, but said he learned this later on, when ESU responded to free his leg (BR 20).

PO Raheb, PO Bresnahan, and PO Franquiz all said that they arrived to the scene later, did not see the vehicle crash occur, and were not involved in handcuffing § 87(2)(b) (BR 21-23).

The Police Accident Report, prepared by PO Cordero, indicates that § 87(2)(b)'s Mercedes struck the front bumper of a parked car on the passenger's side (BR 24). The ESU report indicates that § 87(2)(b)'s foot was pinned in the front bumper of a car and that ESU, in coordination with Emergency Medical Services, used hydraulic tools to free his foot (BR 25). The Unusual Occurrence Report, written by Sgt. Richard Custodio, states that after § 87(2)(b) crashed his Mercedes into the front of a parked Dodge, he attempted to jump over both vehicles to evade the police. He failed to clear the vehicles, instead landing between the Mercedes and the Dodge, breaking his leg (BR 26). (Sgt. Custodio's operator, PO Raheb, said they arrived to the scene well after the crash occurred, § 87(2)(g). The report does not specify who told Sgt. Custodio the information above.) IAB Group 54's investigation was ongoing at the time of the undersigned's most recent contact with the IAB investigator.

Officers are prohibited from "ramming" the subject of a vehicle pursuit. Patrol Guide, Section 221-15 (BR 27). Current Department Advocate's Office policy holds that ramming must be intentional to constitute misconduct. Any use of force by police must be reasonable under the circumstances. These circumstances include the subject's flight risk and the threat posed to the officers. Patrol Guide, Section 221-01 (BR 30).

It is undisputed that § 87(2)(b)'s leg got stuck in the parked Dodge, causing injury. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

While PO Loyola said that he parked his car about five feet away from § 87(2)(b) the police vehicle in the video is much closer. The angle of the video, though, makes it impossible to see whether the police car was actually touching § 87(2)(b) § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

The medical records from § 87(2)(b) and other providers detail the extensive treatment to § 87(2)(b)'s leg injury, but contain little to no analysis of the injury's cause, § 87(2)(g) [REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]

Allegation C – Abuse of Authority: Officers stopped § 87(2)(b)

Allegation D – Discourtesy: Officers spoke discourteously to § 87(2)(b)

Allegation E – Force: An officer struck § 87(2)(b) with an asp.

§ 87(2)(b) ran toward the officers who were handcuffing § 87(2)(b) when he arrived at Newkirk Avenue and East 32nd Street. The driver of the car that hit § 87(2)(b) and two other officers made statements including, “What the fuck are you doing?” and “Get the fuck on the ground.” § 87(2)(b) could not specify which officer made which statement. The officers grabbed § 87(2)(b) and tried to put him on the ground. In his phone statement to the CCRB, § 87(2)(b) said he was “fighting” to avoid being put on the ground; in his in-person statement, § 87(2)(b) said he was “definitely not resisting,” but that he tried to explain to the officers that he was the victim of the hit-and-run. An officer, who § 87(2)(b) described as a Hispanic man with black hair who was 5’8” or 5’9” tall and weighed 160 to 170 pounds, approached and hit § 87(2)(b) twice in the left ribs with an asp. After this, § 87(2)(b) voluntarily got on the ground and was handcuffed. He was kept in the back of a police car for several minutes, but was released when PO Aurelus told the other officers present that § 87(2)(b) was the victim of the hit-and-run (BR 09). During his photo viewing, § 87(2)(b) said the officer who struck him with an asp was possibly PO Calabrese, but he was not certain of this (BR 28). § 87(2)(g)

§ 87(2)(b) went to § 87(2)(b) a few hours after the incident. He said he was assaulted and complained of rib and back pain. Urinalysis revealed no internal bleeding and x-rays found no fractures. He was given pain medication and advised to follow up with his personal physician. § 87(2)(b) went to his personal physician, § 87(2)(b), who referred him for additional x-rays, but § 87(2)(b) did not go to that appointment (see Privileged Documents).

Neither § 87(2)(b) nor the two civilian witnesses interviewed by IAB described seeing any of the events described above. § 87(2)(b) does not appear to be visible in the cell phone video recorded by § 87(2)(b).

Of the eight officers interviewed, the only one who described being involved in handcuffing § 87(2)(b) was PO Colon. She said that, after § 87(2)(b) crashed and PO Loyola stopped their vehicle, she got out and intended to approach § 87(2)(b). However, § 87(2)(b) entered the driver’s seat of her and PO Loyola’s vehicle. She believed he intended to drive away with the car. An officer that she could not identify pulled § 87(2)(b) out of her police car. PO Colon and a few officers she could not identify placed him in handcuffs, which § 87(2)(b) resisted “a little bit.” PO Colon said § 87(2)(b) may have been on the ground at some point during the struggle, but she was not certain of this. She denied that any officer struck him with an asp. She denied saying “Get the fuck on the ground” or “What the fuck are you doing?” and denied using any obscenities toward § 87(2)(b) or hearing another officer do so (BR 17).

PO Calabrese and PO Cordero said they briefly saw § 87(2)(b) try to get in a police car, but they were still handcuffing § 87(2)(b) at the time and were unable to describe what happened with § 87(2)(b) in detail (BR 20 and 19). PO Loyola said that PO Colon informed him that § 87(2)(b) got in a police car, but he did not see this himself (BR 16). PO Aurelus said he later saw § 87(2)(b) handcuffed in the back of a police car, but he did not know why he was handcuffed

(BR 18). PO Bresnahan, PO Franquiz, and PO Raheb said they arrived at the scene later than the other officers and denied having any knowledge of § 87(2)(b) (BR 21-23).

§ 87(2)(g)

§ 87(2)(b). The Unusual Occurrence Report listed sixteen officers as being on scene, but the units listed on the Event Unit Information showed that even this number is incomplete (BR 26 and 29). In PO Raheb's interview, he said that "basically everybody on patrol was there."

Although § 87(2)(b) said during his photo viewing, which included seventeen officers, that PO Calabrese may have been the officer who struck him with an asp, he acknowledged that he was uncertain of this. PO Calabrese said in his interview that he assisted in handcuffing § 87(2)(b) and he was only vaguely aware of § 87(2)(b)'s presence.

Regarding the discourtesy allegations, § 87(2)(b) could not specify which of the officers made the particular statements he mentioned. § 87(2)(g)

§ 87(2)(g)

Squad: 4

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date